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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): A-6655 (191930-1230)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on April 12, 2007

Signature: Karen G. Hazzah

Typed or printed name: Karen G. Hazzah

Application Number	Filed
09/709,143	11/10/2000

First Named Inventor: Arturo R. Rodriguez

Art Unit	Examiner
2623	Lonsberry, Hunter B.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☐ attorney or agent of record. Registration number
- ☒ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34: 48,472

Karen G. Hazzah
Signature

Karen G. Hazzah
Typed or printed name

770-933-9500
Telephone number

April 12, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
Arturo R. Rodriguez

Serial No.:
09/709,145

Filed:
November 10, 2000

For:
Systems and Methods for Adaptive Pricing in a Digital Broadband Delivery System

Group Art Unit:
2623

Examiner:
Lonsberry, Hunter B.

Docket No.:
A-6655 (191930-1230)

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant submits the following amendment and remarks in support of a Request for a Pre-Appeal Brief Conference.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that additional fees are required, beyond those which may otherwise be provided for in the documents accompanying this paper. However, in the event that additional fees are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required (including fees for net additions of claims) are hereby authorized to be charged to 20-0078.

REMARKS

Applicant respectfully submits that the Examiner's rejections of the claims in the pending application are clearly in error. In the outstanding Office Action, the Examiner alleges that advertisements being provided to subscribers at specific times corresponds to "schedule information". However, this is clear error because the claim recites "bandwidth allocation schedule information" and the alleged "schedule" has nothing to do with "bandwidth allocation".

The Examiner also alleges that informing a user of the availability of two different types of channels corresponds to "information describing the division of bandwidth between two services" since the two channels use different amounts of bandwidth. This is also clear error, since ***information*** about channel availability is not equivalent to ***information*** about division of bandwidth simply because the two channels use different amounts of bandwidth.

Another instance of clear error is found in the Examiner's request, in the outstanding Office Action, for "confirmation that Applicant was the first to invent: random access options used in conjunction with VOD, charging different prices to customers based on customer priority". Applicant submits that this request is in error since it attempts to improperly shift the burden of examination, and it is improper to so isolate elements from claims that include multiple elements in combination.

1. Rejection of Claims 1 and 11 under 35 U.S.C. §103

Claims 1 and 11 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (6,157,377) in view of *Gell et al.* (5,802,502) and *Blahut et al.* (5,532,735). Although Applicant believes independent claims 1 and 11 are patentably distinct, the clear errors in rejecting similar elements for these claims are presented together here to facilitate review. Applicant submits that the cited combination of references does not teach "bandwidth allocation schedule information describing a division of bandwidth during a plurality of time

periods, the division of bandwidth being between at least a first service and a second service" as recited in independent claims 1 and 11. Therefore, claims 1 and 11 are allowable.

The outstanding Office Action (p. 7, para. 4) alleges that a teaching in *Blahut et al.* of providing advertisements to subscribers at specific times corresponds to "schedule information". This is clear error because the claim recites "bandwidth allocation schedule information" and the alleged "schedule" has nothing to do with "bandwidth allocation". The outstanding Office Action (p. 7, para. 4) also alleges that a discussion in *Blahut et al.* of delivering video-on-demand services using satellites corresponds to services divided between an available amount of bandwidth. Even assuming, for the sake of argument, that *Blahut et al* does teach ***services divided*** between an available amount of bandwidth, the rejection is a case of clear error, since such disclosure is not a teaching of "***information describing a division*** of bandwidth between at least a first service and a second service".

The outstanding Office Action (p. 6, para. 4) alleges that *Gell et al.* teaches "information describing a ***division*** of bandwidth during a plurality of scheduled periods" at Col. 4, line 34 to Col. 5, line 7. This is clear error since that passage references "using stored average data indicating the typical demand for long distance telecommunications at the relevant time of day, possibly including consideration of the day type--holiday, working day, weekend". First, these day types are not disclosed as scheduled periods. Second, even assuming, for the sake of argument, that a total amount of bandwidth can be computed from a number of calls expected in a particular time period, this total bandwidth is not equivalent to "information describing a ***division*** of bandwidth during a plurality of time periods".

The outstanding Office Action (p. 6, para. 4) appears to allege that a teaching of *Gell et al.* of dynamically generating prices corresponds to "dynamically assigning a price criterion based at least in part on the bandwidth allocation schedule information". Even assuming, for the sake of argument, that *Gell et al* teaches selecting a lowest price based on QoS and quality selections and that QoS is related to bandwidth, claims 1 and 11 recite "bandwidth allocation

schedule information…describing a ***division of bandwidth*** during a plurality of time periods, the division of bandwidth being between at least a first service and a second service". As explained above, none of the cited references discloses "information describing a division of bandwidth". Thus, the combination of references does not disclose, teach, or suggest "dynamically assigning a price criterion" based on "information describing a division of bandwidth" between services.

2. Rejection of Claims 20 and 29 under 35 U.S.C. §103

Claims 20 and 29 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* (6,157,377) in view of *Gell et al.* (5,802,502), *Blahut et al.* (5,532,735), and *Son et al.* (6,697,376). Although Applicant believes independent claims 20 and 29 are patentably distinct from each other, the clear errors in rejecting similar elements for these two claims are presented together here to facilitate review. Applicant submits that, for reasons similar to those discussed above in connection with independent claims 1 and 11, the cited combination of references does not teach "a pricing system that receives bandwidth allocation information, from the bandwidth allocation manager, describing the division of bandwidth between the content delivery modes, and that dynamically assigns a price criterion to each of a group of viewing options based at least in part on the bandwidth allocation information received from the bandwidth allocation manager." Therefore, claims 20 and 29 are allowable.

3. Rejection of Dependent Claims 2-8, 10, 12-17, 18, 20, 22-28, 30-46

Dependent claims 2-7, 10, and 12-17 have been rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* in view of *Gell et al* and *Blahut et al.* Dependent claims 21-26, 28, and 30-44 are rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* in view of *Gell et al* and *Son et al.* (6,697,376). Dependent claims 8 and 18 are rejected under §103(a) as allegedly obvious over *Shah-Nazaroff et al.* in view of *Gell et al*, *Blahut et al.* and *Candelore et al.* (6,057,872). *Son et al.* and *Candelore et al.* do not make up for the deficiencies of *Shah-*

Nazaroff et al., *Gell et al*, and *Blahut et al.* described above. Therefore, dependent claims 2-8, 10, 12-17, 18, 20, 22-28, 30-46 are considered patentable under any combination of these references. Furthermore, since independent claims 1, 11, 20, and 29 are allowable for at least the reasons discussed above, dependent claims 2-8, 10, 12-17, 18, 20, 22-28, 30-46 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988).

CONCLUSION

Favorable reconsideration and allowance, or the re-opening of prosecution on the merits, of the present application and claims 1-8, 10-18, and 20-46 is hereby courteously requested.

Respectfully submitted,

By: /Karen G. Hazzah/

Karen G. Hazzah,
Reg. No. 48,472

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.
100 Galleria Parkway, NW
Suite 1750
Atlanta, Georgia 30339-5948
Tel: (770) 933-9500
Fax: (770) 951-0933